Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations	)	
	)	
Wireline Competition Bureau	)	WC Docket No. 16-132
Enforcement Bureau	)	EB Docket No. 16-120
Wireless Telecommunications Bureau	)	WT Docket No. 16-138

COMMENTS OF CENTURYLINK

Timothy M. Boucher
1099 New York Avenue, N.W.
Suite 250
Washington, D.C. 20001
(303) 992-5751
Timothy.boucher@centurylink.com

Attorney for

CENTURYLINK, INC.

December 5, 2016

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations	)	
	)	
Wireline Competition Bureau	)	WC Docket No. 16-132
Enforcement Bureau	)	EB Docket No. 16-120
Wireless Telecommunications Bureau	)	WT Docket No. 16-138

COMMENTS OF CENTURYLINK

CenturyLink, Inc. ("CenturyLink")[1] files these comments in response to the Public Notice of November 3, 2016 in the above-referenced proceeding.[2]

I. INTRODUCTION AND SUMMARY

As the Commission undertakes its next biennial review, it does so in the context of a marketplace that has undergone a dramatic transformation from the one that the Commission faced when it adopted many of its core legacy telecommunications regulations. For the most part, when adopting those regulations, the Commission did so in a world where there was a single Plain Old Telephone Service ("POTS") network providing a single service (voice) and where incumbent local exchange carriers ("ILECs") were deemed to exercise exclusive control over bottleneck facilities. Thus, these regulations were adopted to address perceived public interest concerns in that context. But, that legacy marketplace has long since disappeared. ILECs,

---

[1] These comments are filed on behalf of CenturyLink, Inc. and all of its regulated affiliates.

[2] *Commission Seeks Public Comment in 2016 Biennial Review of Telecommunications Regulations,* WC Docket Nos. 16-132, *et al*., Public Notice, FCC 16-149 (rel. Nov. 3, 2016) ("*Public Notice*").

across the market, now provide only a small share of relevant data and voice communications services. From a technological perspective, communications have evolved toward new technologies such as Voice over Internet Protocol ("VoIP"), mobile wireless service and multi-functional broadband offerings.

This new, transformed marketplace is the context that must inform the Commission's determinations as it seeks to meet its obligations under Section 11 of the Communications Act of 1934, as amended, (the Act) to review biennially "all regulations…in effect at the time of the review that apply to the operations or activities of any provider of telecommunications service; and [to] determine whether any such regulation is no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."[3] In doing so, the D.C. Circuit's *Cellco* decision[4] instructs that the Commission must undertake a very straight-forward exercise: It must weigh whether the prior public interest determinations underlying the adoption of its regulations -- i.e. they were in the public interest at that time -- remain valid given the level of progress that has been made toward meaningful economic competition since their adoption.[5] If not, Section 11 affirmatively requires that "[t]he Commission shall repeal or modify any [such] regulation[.]"[6]

Each of the rules discussed below fails this Section 11 test. These are:

- Obligations arising under Section 272 of the Act.
- Rule 64.1903 structural separation requirements for independent ILECs.

[3] 47 U.S.C. § 161(a).

[4] *Cellco Partnership d/b/a Verizon Wireless v. FCC*, 357 F.3d 88 (D.C. Cir. 2004).

[5] *Id.*, 357 F.3d at 98-99.

[6] 47 U.S.C. § 161(b).

- Part 51 interconnection requirements arising under Section 251.
- Part 69, Subpart H pricing flexibility rules.
- Part 1, Subpart J pole attachment rate complaint procedures.
- Part 54 residual ETC voice obligations in high-cost areas where price cap carriers do not receive high-cost universal service support.
- Part 54 universal service contribution rules.
- Part 54 universal service audit requirements.
- Part 32 accounting rules.
- Part 63 rules regarding discontinuance, reduction, outage and impairment.
- Part 8 Open Internet rules.

In short, given the current state of competition, the historic public interest findings used to justify the broad variety of legacy ILEC-centric regulation at issue -- and even some more recent vintage regulations like the Open Internet rules -- plainly are no longer valid. Therefore, the Commission should take all the steps it can to dismantle those regulations and to ensure that any remaining regulation can only be justified if it is absolutely necessary, narrowly tailored and treats all providers the same. It may not be possible to get all the way there via the biennial review process alone. In some instances, forbearance from statutory mandates or even a re-writing of those obligations at the legislative level may be appropriate. But, the Commission can take a critical first-step by repealing the regulations discussed below via its biennial review process.

II. BACKGROUND: THE VIBRANT STATE OF COMPETITION IN TODAY'S TELECOMMUNICATIONS MARKETPLACE.

The evidence of the vibrant state of competition in today's telecommunications marketplace is overwhelming. Much of it can be found in the Commission's own reports and orders and CenturyLink does not attempt to re-create that record here. Even a cursory discussion of these economic trends makes clear the stark contrast between the dominant ILEC world of yesterday and the competitive market of today.

To begin with, competition is thriving in the broadband Internet access services market. This is a fitting place to start a description of marketplace trends because of the evidence it provides of robust competition by a diversity of providers in this particular market. But, also because it crystallizes a clear picture of the new telecommunications world. As noted, it is a world where the single, ILEC-provided, POTS network providing a single service (voice) has been replaced by multi-functional broadband networks offered by numerous providers and using a variety of technologies. And, it is a world where voice service is just one application among many. Among other trends here, Commission reports document that fixed broadband subscriptions from telecommunications, cable, satellite, and fixed wireless providers have grown from seven million at the end of 2000 to 102 million as of year-end 2015.[7] And, mobile broadband subscriptions have grown from three million at the end of 2005 to 253 million as of year-end 2015.[8] The latest report also demonstrates that 78% of US households are located in census tracts where 3 or more providers report that they provide services with speeds of at least 3 mbps

---

[7] *Compare* Industry Analysis Div., FCC, *High Speed Services for Internet Access: Subscribership as of December 31, 2000* at Table 1 (Aug. 2001), *available at* https://transition.fcc.gov/Bureaus/Common_Carrier/Reports/FCC-State_Link/IAD/hspd0801.pdf *with* Industry Analysis and Technology Div., FCC, *Internet Access Services: Status as of December 31, 2015* at Figure 1 (November 2016) ("*Year-End 2015 Internet Access Report*") *available at* http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db1130/DOC-342358A1.pdf .

[8] *Compare* Industry Analysis and Technology Div., FCC, *Internet Access Services: Status as of December 31, 2009* at Table 1 (Dec. 2010), *available at* https://apps.fcc.gov/edocs_public/attachmatch/DOC-303405A1.pdf, *with Year-End 2015 Internet Access Report* at Figure 1.

downstream and over 768 kbps upstream.[9] The report also indicates 66% of US households are located in census tracts where 3 or more providers report that they provide services with speeds of at least 10 mbps downstream and at least 1 mbps upstream.[10] When mobile services are added to the equation, those percentages escalate dramatically.

Not surprisingly, given these trends, ILEC market shares in the voice market have fallen off dramatically in this new world -- and wireless substitution has become prevalent. Already the vast majority of residential customers have voluntarily transitioned from POTS service to wireline VoIP services offered by cable companies, or they have left the wireline network entirely. According to the CDC's latest statistics, more than 48 percent of American homes have "cut the cord" and now rely solely on wireless telephone services.[11] This voluntary behavior by an overwhelming number of consumers demonstrates that facilities-based interconnected VoIP, 3G and 4G wireless services, and other similar services are reasonably interchangeable alternatives to POTS.

The Commission has acknowledged this market transformation on numerous occasions. In its December 2015 order addressing the US Telecom Modernization Forbearance Petition (*Modernization Forbearance Order*), which relied on slightly older data in some cases, the Commission stated:

> In reviewing the Petition, we are cognizant of the broad market trends associated with the services at issue. For example, we recently pointed out in the *Emerging Wireline Order* that 30 percent of all residential customers

---

[9] *Year-End 2015 Internet Access Report* at Figure 4.

[10] *Id.*

[11] Stephen J. Blumberg, Ph.D., and Julian V. Luke, Division of Health Interview Statistics, National Center for Health Statistics, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, July-December 2015*, at 1 (May 11, 2016), *available at* http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201605.pdf .

> choose IP-based voice services from cable, fiber, and other providers as alternatives to legacy voice services. We noted that 44 percent of households were "wireless-only" during January-June of 2014. That number increased to 45.4 percent by the end of December 2014, such that more than two in every five households did not have a landline telephone. We have stated that, overall, almost 75 percent of U.S. residential customers (approximately 88 million households) no longer receive telephone service over traditional copper facilities. Similarly, USTelecom asserts in its Petition that barely one-quarter of U.S. households rely on traditional switched service from an incumbent LEC. We further note that, according to our most recent data, 53.5 percent of connections to businesses are currently provisioned over incumbent LEC switched facilities.[12]

The Commission, more recently, in its July 2016 order granting US Telecom's Non-Dominance Petition (*Non-Dominance Order*), cited evidence that only 16 percent of households retained incumbent LEC switched access lines as of the end of 2015.[13] It also found there that "'the widespread deployment of wired and wireless IP-based networks' has fostered greater reliance on voice alternatives such as text, email, video chat, and social networking applications."[14] And, relying on this and other evidence, it ultimately acknowledged:

> There has been an indisputable "societal and technological shift" away from switched telephone service as a fixture of American life. Consumers are

[12] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks; Lifeline and Link Up Reform and Modernization; Connect America Fund*; WC Docket Nos. 14-192, 11-42 and 10-90, Memorandum Opinion and Order, 31 FCC Rcd 6157, 6161-62 ¶ 6 (citations omitted) (2015) ("*Modernization Forbearance Order*"), *appeals pending sub nom.*, *AT&T, Inc. v. FCC,* No. 16-1002 (D.C. Cir. Pet. for Rev. filed Jan. 6, 2016) (No. 16-1002 was subsequently consolidated and briefed with No. 15-1038, *AT&T, Inc. v. FCC*). CenturyLink also filed a Petition for Review of the Memorandum Opinion and Order on Feb. 26, 2016 (D.C. Cir. No. 16-1072, which was also subsequently consolidated and briefed with No. 15-1038). To date, a date for oral argument has not been established for Nos. 15-1038, *et al*.

[13] *Technology Transitions; USTelecom Petition for Declaratory Ruling That Incumbent Local Exchange Carriers Are Non-Dominant in the Provision of Switched Access Services; Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*, 31 FCC Rcd 8283, 8289 ¶ 16 (2016) ("*Non-Dominance Order*").

[14] *Id.* (citations omitted).

> increasingly able and willing to abandon their landlines in favor of communications technologies that do not rely on local telephone switches. In turn, they are depending less and less on the interstate switched access services of incumbent LECs to facilitate communications across state lines.[15]

Following the recent activities in the Commission's Business Data Services (BDS) docket, it is clear that the market for high-capacity dedicated BDS is also strongly competitive.[16] Cable providers, CLECs, and other alternative providers have seized significant market share for those services as well.[17] And, the ongoing migration from DS1 and DS3 services to more capable Ethernet and other IP-based services provides conclusive evidence that business customers view these IP-based services to be adequate substitutes for DSn services.

And, of course, the irrefutable reality that ILECs are not dominant in the provision of long-distance service has also been well documented – more recently in the robust factual support submitted with the US Telecom Modernization Forbearance Petition.[18] Indeed, the concept of long distance has become wholly obsolete in today's all-distance world. This is another trend that the Commission has already recognized. In the *Modernization Forbearance Order*, the Commission acknowledged its 2007 finding that the stand-alone long-distance was

[15] *Id.* at 8289-90 ¶¶ 16-17 (citations omitted).

[16] *See, e.g.*, Letter from Melissa Newman, CenturyLink to Marlene H. Dortch, FCC, WC Docket Nos. 05-25, *et al*. (Oct. 19, 2016); Letter from Melissa Newman, CenturyLink to Marlene H. Dortch, FCC, WC Docket Nos. 16-143, *et al*. (Sep. 15, 2016); Letter from M. Saperstein, for Frontier and CenturyLink, to Marlene H. Dortch, FCC, WC Docket Nos. 16-143, *et al*. (Sep. 8, 2016).

[17] *See, e.g.*, Letter from Melissa Newman, CenturyLink to Marlene H. Dortch, FCC, WC Docket Nos. 16-143, *et al*. (Sep. 15, 2016); Letter from M. Saperstein, for Frontier and CenturyLink, to Marlene H. Dortch, FCC, WC Docket Nos. 16-143, *et al*. (Sep. 8, 2016).

[18] *Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Enforcement of Obsolete ILEC Legacy Regulations That Inhibit Deployment of Next-Generation Networks*; WC Docket No. 14-192, at 15 (filed Oct. 6, 2014) ("US Telecom Modernization Petition").

already, at that time, a "fringe" market for mass market services – and found that the trend had only continued.[19]

III. SPECIFIC RULES THAT SHOULD BE REPEALED UNDER THE SECTION 11 STANDARD.

Given this dramatic transformation in the marketplace, the Commission should now find that there are a significant number of its rules that meet the Section 11 standard – i.e. they are "no longer necessary in the public interest as the result of meaningful economic competition between providers of such service."[20] Applying the straight-forward weighing exercise called-for by the *Cellco* decision, the historic public interest findings used to justify these obligations plainly are no longer valid. Therefore, the Commission should take all the steps it can to dismantle those regulations. As it does so, the Commission should remain cognizant that, given the current state of competition, any remaining regulation can only be justified if it is absolutely necessary, narrowly-tailored and treats all providers the same. As noted above, it may not be possible to get all the way there via the biennial review process alone. In some instances, forbearance from statutory mandates or even a re-writing of those obligations at the legislative level may be appropriate. For example, certain of the Section 272 and Section 251 obligations discussed below may ultimately benefit from such activity. But, the Commission can take a critical first-step by repealing the regulations discussed below via its biennial review process.

A. Obligations Arising Under Section 272.

In the *Modernization Forbearance Order*, the Commission, relying upon the very trends discussed above, eliminated the "competitive checklist" set forth in Section 271(c)(2)(B) as well

[19] *Modernization Forbearance Order*, 31 FCC Rcd at 6184-85 ¶ 49.

[20] 47 U.S.C. § 161(a).

as certain remaining equal access obligations.[21] But, it declined to eliminate obligations that arise out of Section 272 that were similarly intended to protect long distance competition from supposed RBOC market power with respect to in-region, long distance services. Specifically, it rejected US Telecom's forbearance request as to Section 272(e)(1), which requires that an RBOC "fulfill any requests from an unaffiliated entity for telephone exchange service and exchange access within a period no longer than the period in which it provides such . . . service . . . to itself or to its affiliates[.]"[22] And, it rejected US Telecom's forbearance request as to Section 272(e)(3), which requires, in part, that an RBOC "impute to itself . . . an amount for access . . . that is no less than the amount charged to any unaffiliated" long distance carriers "for such service[.]"[23] RBOCs also remain subject to the special access performance metrics and imputation obligations that the Commission, in the *Section 272 Sunset Order*, imposed as conditions for relief from the previous requirement that RBOC in-region interLATA services be subject to dominant carrier regulation unless they were offered through a Section 272 separate affiliate.[24] The public interest purpose of these requirements -- to protect long distance competition in a prior telecommunications era that assumed the need for separate local and long distance services and providers -- is no longer valid. Absent congressional action, the Commission should use this proceeding, in concert with the Commission's forbearance

[21] *Modernization Forbearance Order*, 31 FCC Rcd at 6173-78 ¶¶ 28-36.

[22] 47 U.S.C. § 272(e)(1).

[23] 47 U.S.C. § 272(e)(3).

[24] *Section 272(f)(1) Sunset of the BOC Separate Affiliate and Related Requirements; 2000 Biennial Regulatory Review of Separate Affiliate Requirements of Section 64.1903 of the Commission's Rules; Petition of AT&T Inc. for Forbearance Under 47 U.S.C. § 160(c) with Regard to Certain Dominant Carrier Regulations for In-Region, Interexchange Services*, 22 FCC Rcd 16440, 16450 ¶ 18, 16476 ¶ 72, 16487-94 ¶¶ 95-108 ("*272 Sunset Order*").

authority, to eliminate the Section 272(e) obligations and the related additional conditions described above.

B. Rule 64.1903 Structural Separation Requirements For Independent ILECs.

The Commission should also eliminate the structural separation requirements imposed by Section 64.1903 of the Commission's rules on independent ILECs – RLECs and price cap ILECs alike – with no conditions.[25] These requirements are also irrelevant in the current all-distance marketplace. The Commission previously concluded that these rules should not apply to price cap carriers that voluntarily agreed to be subject to the same conditions that were applied to the RBOCs and their independent ILEC affiliates in the *Section 272 Sunset Order*,[26] but declined at the time to provide similar relief to RLECs.[27] The public interest determinations driving this historical refusal to grant both RLECs and price cap ILECs unconditional relief from Rule 64.1903 have also ceased to be valid.

C. Part 51 Interconnection Requirements Arising Under Section 251.

In Sections 251(a) and (b), Congress established regulatory duties applicable to all telecommunications carriers and local exchange carriers, respectively, to ensure that no carrier could refuse to provide interconnection, resale, number portability, dialing parity, access to rights-of-way, or reciprocal compensation.[28] Section 251(c) of the Act goes a step further and

---

[25] 47 C.F.R. § 64.1903.

[26] *Petition of USTelecom for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of Certain Legacy Telecommunications Regulations*, *et al*., 28 FCC Rcd 7627, 7690 § 139 (2013) ("2013 USTelecom Forbearance Order"). In light of the burdens imposed by these conditions, it is not surprising that, to-date, no price cap LEC has accepted this conditional relief.

[27] *Id*.

[28] 47 U.S.C. §§ 251(a), (b).

imposes an additional set of onerous interconnection and sharing obligations solely on ILECs.[29] These obligations extend far beyond the voluntary wholesale offerings of the ILECs' competitors. As implemented by the Commission, Section 251(c) requires ILECs to provide to their competitors: interconnection at any technically feasible point in the ILECs' networks at rock-bottom TELRIC rates; access to network elements comprising nearly every component comprising ILEC networks, again at TELRIC rates, which are often less than half of the corresponding rate for wholesale services not subject to TELRIC; resale of all ILEC telecommunications services at discounted rates; detailed notice of network changes; and collocation of CLEC equipment in central offices and other ILEC locations. These regulations currently fill 75 pages in the Code of Federal Regulations. For the most part, these rules have not changed for more than a decade, despite the fact that the competitive transformation described above has rendered them unnecessary (though ILEC competitors, of course, take advantage of these asymmetric protections when it is in their interest to do so.) The public interest determinations underlying the Commission's Section 251(c) framework are also no longer valid. Absent congressional action, the Commission should use this proceeding, in concert with the Commission's forbearance authority, to eliminate most, if not all, of these outdated rules.[30]

D. Part 69, Subpart H Pricing Flexibility Rules.

As noted above, the industry is in the midst of a mass migration from aging ILEC-provided TDM-based data services, such as DS1s and DS3s, to newer, more capable IP-based

[29] *Id.* § 251(c).

[30] 47 C.F.R., Part 51, Subparts D (§§ 51.301-51.335), F (§§ 51.501-51.515), G (§§ 51.601-51.617).

services, such as Ethernet and Wave services provided primarily by non-ILEC suppliers. Nevertheless, the Commission's rules in this area remain firmly rooted in the 1990s, with intrusive pricing regulation of DSn services in many areas where customers can obtain substitute services from a long list of alternative providers. In due time, the Commission should update these rules to eliminate pricing regulation in areas in which one or more competitors offer a substitute service. But, in this biennial review, the Commission should modify its rules to allow price cap LECs to offer contract-based tariffs on a nationwide basis.[31] As a practical matter, this will permit price cap LECs to reduce, but not raise, their DSn rates, with their generally available price cap rates serving as a backstop. These contract tariffs thus undoubtedly further the public interest by creating savings for consumers, offering customized rates, terms and conditions, and spurring increased competition.

E. **Part 1, Subpart J Pole Attachment Rate Complaint Procedures.**

Section 224 of the Act requires "utilities," including both ILECs and CLECs to provide access to their poles, ducts, conduits, and rights-of-way at regulated rates, terms and conditions.[32] But the Commission has interpreted this statutory provision to impose, via its pole attachment rate complaint procedures,[33] asymmetrical burdens on ILECs by allowing CLECs (including those affiliated with cable companies) to demand access to ILEC-constructed poles, ducts, conduits, and rights-of-way – at below-market rates – while denying ILECs reciprocal access to

---

[31] 47 C.F.R., Part 69, Subpart H (§§ 69.701-69.731). *See also* US Telecom Modernization Petition at 99 (identifying the Part 61 and 69 rules potentially affected by this modification).

[32] 47 U.S.C. § 224.

[33] 47 C.F.R., Part 1, Subpart J (§§ 1.1401-1.1424).

such CLEC-constructed infrastructure.[34] Whatever public interest justifications may have been mustered for these one-sided obligations in the past, they are no longer valid. ILECs have no special advantages in deploying poles, ducts, conduits, and rights-of-way. Further, perpetuating the current asymmetric obligations to provide access to this infrastructure disserves the public interest and harms consumers by distorting both ILEC and CLEC incentives to construct infrastructure that can be used to provide advanced services.

F. Part 54 Residual ETC Voice Obligations In High-cost Areas Where Price Cap Carriers Do Not Receive High-cost Universal Service Support.

In late 2014, the Commission relieved price cap carriers of legacy ETC voice obligations in three cases: (1) in low-cost census blocks; (2) in census blocks served by a provider of voice and broadband service that is not receiving high-cost support, and (3) at some point in the future in census blocks where a provider other than the price cap carrier ETC wins an auction for high cost funding and is receiving that support.[35] At the same time, it left in place the legacy ETC

---

[34] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16103-04 ¶ 1231 (1996) ("*Local Competition Order*") (subsequent history omitted). The Ninth Circuit expressed "serious doubts about the FCC's analysis[]" on this point, noting that in its view Sections 224 and 251(b)(4) could be better harmonized as imposing reciprocal access obligations on all LECs (under Section 251(b)(4)) but granting only CLECs a right to demand access to the facilities of non-LEC utilities (such as electric and gas companies). *US West Communications, Inc. v. Hamilton*, 224 F.3d 1049, 1053-54 (9th Cir. 2000) (subsequent history omitted). Nonetheless, the Ninth Circuit concluded that it was bound to defer to the Commission's analysis. *Id.* at 1054. The Commission's *2011 Pole Attachment Order* reaffirmed the Commission's interpretation that "incumbent LECs have no right of access to utilities' poles pursuant to section 224(f)(1)" and that the Act "do[es] not grant incumbent LECs an access right under section 251(b)(4) that does not exist under section 224." *Implementation of Section 224 of the Act*, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, 5327-28 ¶ 202, 5333 ¶ 212 n.643 (2011) (*2011 Pole Attachment Order*), *aff'd sub nom., Am. Elec. Power Serv. Corp. v. FCC*, 708 F.3d 183 (2013).

[35] *Connect America Fund; ETC Annual Reports and Certifications; Petition of USTelecom for Forbearance Pursuant to 47 U.S.C. § 160(c) from Obsolete ILEC Regulatory Obligations that Inhibit Deployment of Next-Generation Networks*, Report and Order, 29 FCC Rcd 15644, 15645

voice obligations in certain high-cost areas where price cap carrier ETCs no longer receive any high-cost support. Price cap ETC obligations are derivative of an overarching universal service framework that obligates ILECs, uniquely, to extend service universally – in part, because of decades old assumptions about benefits that they derive as monopoly providers.

This is an unfunded obligation under the universal service high cost program that the Commission should remedy immediately. This retention of ETC voice obligations without high-cost support is the result of an improvident transition design where the Commission has moved all high-cost support for price cap carriers to support broadband capable networks – and targeted support to specific geographic areas. But, at the same time, it has left legacy ETC voice obligations in place in high-cost areas where price cap carriers no longer receive any high-cost support. Eventually the Commission expects to provide high-cost support in these areas through a competitive bidding process to a carrier to deploy broadband-capable networks, but that process remains under development without a certain future. In the indefinite interim, it has required price cap carriers to meet expensive voice service obligations without any high-cost support. The Commission needs to either provide high-cost support in all areas where it continues to impose ETC obligations (while it completes its transition) or immediately eliminate ETC obligations in high-cost areas where price cap carriers are not receiving high-cost support. In all events, the public interest determinations that led the Commission to create the current requirements are no longer valid.[36]

¶ 3, 15670 ¶ 69, 15704, App A (promulgating 47 C.F.R. § 54.201(d)(3)), *appeal pending sub nom.*, *AT&T, Inc. v. FCC*, No. 15-1038 (D.C. Cir. Pet. for Rev. filed Feb. 19, 2015) (No. 15-1038 was subsequently consolidated and briefed with No. 16-1002, *et al*., *AT&T, Inc. v. FCC*) (*see* note 12, *supra*).

[36] The rules affected by this discussion are found at Part 54, Subpart C, Carriers Eligible for Universal Service Support.

G. Part 54 Universal Service Contribution Rules.

The Commission's universal service contribution rules also satisfy the Section 11 test.

Since 2011, the Commission has undertaken significant reform of the universal service distribution programs. It is overdue for it to do the same for the methodology by which contributions are made into the universal service fund. The current contribution methodology relies on revenues from services that make up an increasingly smaller portion of communication services as communications continue to move to broadband Internet-based services that are not assessable at all or are only partially assessable. The contribution factor has increased dramatically from its origins causing end users and providers alike to try to purchase or provide services that minimize federal USF surcharges and, in turn, contributions. Communications technology, infrastructure, and global reach has far outpaced modifications to the lengthy and complicated instructions to the FCC Form 499-A that serve as the primary federal universal service contributions guidance. Universal service contribution methodology needs to be administratively simplified, expanded to a wider contribution base, and applied in a competitively neutral manner. The universal service distribution programs will not continue to move forward successfully in the age of internet, if the Commission does not also move forward with fundamental changes to the contribution methodology that enables the funding of those programs.[37]

H. Part 54 Universal Service Audit Requirements.

While universal service audits are appropriate to protect the integrity of the program, repetitive audits that consistently result in no findings or insignificant findings are unnecessary.

---

[37] The rules affected by this discussion are found at Part 54, Subpart H, Administration.

CenturyLink is comprised of many operating companies and other affiliates, of which more than 100 are separately designated ETCs and which collectively offer service in 37 states. Because of the manner in which USAC randomly selects individual ETCs for Payment Quality Assurance audits (PQAs), CenturyLink has been subject to almost 300 PQAs in the last seven years. Since 2010 CenturyLink ETCs have had 290 high-cost or low-income PQAs that reviewed $66.7 million in support received. Of the $66.7 million in support received, CenturyLink has had to refund $766, or on the order .001% of the support reviewed.

There are reform steps the Commission could undertake to avoid this type of wasteful activity. For example, it could limit the number of universal service audits of affiliate companies per year and further limit the number of universal service audits of affiliate companies without material findings of non-compliance. It could also eliminate the biennial audit requirement for Lifeline providers who do not have a material finding of non-compliance in their prior audit.[38] In 2012, when the Commission adopted a new biennial Lifeline audit requirement for providers that receive more that $5 million annually in reimbursements (on a holding company basis), it gave the Wireline Competition Bureau discretion to relieve a carrier of its audit obligation in this circumstance.[39] The Commission should now mandate this result. Finally, to the extent that material non-compliance is found in a limited area, the provider should be subject only to the detailed biennial audit review for that specific area in the next audit cycle.

---

[38] In addition to PQAs and other audits for the high-cost and low-income program, CenturyLink is also subject to the biennial audit requirement of the Lifeline program. This audit requirement is set out in 47 C.F.R. § 54.420(a).

[39] *Lifeline and Link Up Reform and Modernization; Lifeline and Link Up; Federal-State Joint Board on Universal Service; Advancing Broadband Availability Through Digital Literacy Training*, Report and Order and Further Notice of Proposed Rulemaking, 27 FCC Rcd 6656, 6783-84 ¶ 295 (2012).

At bottom, wasteful universal service audit requirements fail the Section 11 test.[40]

I. **Part 32 Accounting Rules.**

Part 32 of the Commission's rules requires ILECs to keep accounting records in compliance with the Uniform System of Accounts (USOA) rather than Generally Accepted Accounting Principles ("GAAP") accounting.[41] This is another obligation imposed uniquely on ILECs based on long-since-lapsed assumptions that special accounting data was needed from dominant legacy telephone companies. These assumptions were based, in turn, on the needs of rate of return cost-based rate-making – the prevailing regulatory framework for most ILEC services at the time. But, price cap regulation is now the norm and, thus, any current federal regulatory data needs can be satisfied under GAAP accounting. The Commission issued an NPRM in 2014 which proposed eliminating or, in the alternative, reforming the USOA for price cap ILECs and ILECs subject to rate-of-return regulation. And, it's still possible it could act in that proceeding in the near term to eliminate the Part 32 rules. But, if it doesn't, the Commission should do so as part of its biennial review. These requirements impose considerable unnecessary costs on ILECs. Given that GAAP accounting is sufficient to meet the Commission's regulatory needs, the public interest determinations that led to the adoption of additional regulatory accounting requirements for ILECs are no longer valid.

[40] The rules affected by this discussion are found at Part 54, §§ 54.320, 54.420, 54.516, 54.619 & Subpart H, Administration.

[41] 47 C.F.R., Part 32.

J. Part 63 Rules Regarding Discontinuance, Reduction, Outage and Impairment.

Despite the unabated march toward IP migration documented above, the Commission has ignored this development in its discontinuance rules.[42]

Instead, it has, to-date, developed cumbersome new requirements and procedures for discontinuing carriers to prove the obvious: that the wireless and IP-based services that millions of customers have voluntarily chosen to replace their TDM-based services are adequate substitutes for those legacy TDM services. In July, for example, the Commission established a so-called "streamlined" process for applications to discontinue legacy TDM-based voice services as part of a technology transition. Under that process, the applicant must certify or show that all affected customers will have access to one or more replacement services offering all of the following: (i) substantially similar levels of network infrastructure and service quality; (ii) compliance with existing federal and/or industry standards required to ensure that critical applications such as 911, network security, and applications for individuals with disabilities remain available; and (iii) interoperability and compatibility with an enumerated list of applications and functionalities determined to be key to consumers and competitors.[43] As part of this showing, applicants generally will be required to provide 30 days of network performance testing, as well as outage and repair reporting, to show that the substitute service meets Commission-defined benchmarks for latency, data loss, and network availability.[44]

---

[42] 47 C.F.R., Part 63; 47 C.F.R. § 1.764.

[43] *Technology Transitions,* Declaratory Ruling, Second Report and Order and Order on Reconsideration, 31 FCC Rcd 8283, 8305 ¶ 65 (2016).

[44] *Id.* at 8316-27 ¶¶ 94-122.

These issues present industry-wide questions, and are properly considered in industry-wide proceedings. Addressing them in the discontinuance process will ensure only that they apply disproportionately to ILECs, and not to other providers offering equivalent competition services.

Requirements for substitute services to be functionally identical to the discontinued services they are replacing also contravene the Commission's prior interpretation of Section 214(a), create unnecessary burdens, and dramatically slow the IP transition.

Finally, adding insult to injury, in recent years, the Commission has also vastly expanded the circumstances in which Commission approval under Section 214 is required, despite longstanding precedent to the contrary. In a 2014 declaratory ruling, the Commission ruled that, for purposes of Section 214, a service is defined to include the uses to which customers may put the service, regardless of the way the service is defined in the carrier's tariff or contract.[45] This means that a carrier may be required to seek Commission approval to eliminate the use of a service of which it was not even aware. Then, in 2015, the Commission held that Section 214 approval is also required to discontinue *wholesale* services, unless the carrier can first determine, "with reasonable certainty," that none of its wholesale customers' retail end users would lose service.[46] In that same order, the Commission also conditioned the discontinuance of DSn

---

[45] *Ensuring Consumer Premises Equipment Backup Power for Continuity of Communications*; *Technology Transitions*; *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*; *Special Access for Price Cap Local Exchange Carriers*; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange Carrier Rates for Interstate Special Access Services*, Notice of Proposed Rulemaking and Declaratory Ruling, 29 FCC Rcd 14968 (2014), *appeal pending sub nom.*, *United States Telecom Association v. FCC*, No. 15-1414 (D.C. Cir. Pet. for Rev. filed Nov. 12, 2015).

[46] *Technology Transitions*; *Policies and Rules Governing Retirement of Copper Loops by Incumbent Local Exchange Carriers*; *Special Access for Price Cap Local Exchange Carriers*; *AT&T Corporation Petition for Rulemaking to Reform Regulation of Incumbent Local Exchange*

services on the carrier's offering of an IP-based substitute on reasonably comparable rates, terms and conditions to the discontinued DSn service.[47]

This biennial review provides a ripe opportunity for the Commission to modify the Section 214 process to expedite the IP transition while ensuring that affected customers are adequately protected. If a carrier seeking to discontinue POTS in a given area certifies that all affected customers in that area will have access to facilities-based interconnected VoIP, 3G or 4G wireless service, or TDM voice service, the Commission should establish a rebuttable presumption in favor of approving the application. Affected customers will then have an opportunity to rebut this presumption through the Section 214 notice and comment process. For the discontinuance of wholesale services, the Commission should find that Section 214 approval is not required unless that discontinuance will cause end user customers to lose retail service. And the Commission should eliminate its unlawful condition requiring ILECs to provide replacement IP-based services.

Discontinuance obligations above and beyond what is described above fails the Section 11 test.

K. **Part 8 Open Internet Rules.**

The Commission should also eliminate the Open Internet rules (or at least the more onerous aspects of the rules) in this biennial review and reverse its prior re-classification of broadband Internet access service as a telecommunications service.[48] Like the other rules

---

Carrier Rates for Interstate Special Access Service, Report and Order, Order on Reconsideration, and Further Notice of Proposed Rulemaking, 30 FCC Rcd 9372, 9434 ¶ 115 (2015).

[47] *Id.* at 9376-78 ¶ 6, 9453-57 ¶¶ 147-51.

[48] 47 C.F.R., Part 8; *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 (2015), *aff'd sub nom.*, *United States Telecom*

discussed above, the public interest determinations underlying the adoption of the Open Internet rules are no longer valid.

The Commission initially adopted Open Internet rules in 2010. At that time, it adopted four "high-level rules embodying four core principles: transparency, no blocking, no unreasonable discrimination, and reasonable network management[]" for the ostensible purpose of "preserv[ing] the Internet's openness and broadband providers' ability to manage and expand their networks[]…".[49] In 2014, the D.C. Circuit overturned three of those rules – leaving only the transparency rules in place – based on a finding that the Commission lacked adequate legal authority to adopt them.[50]

Subsequently, in 2015, the Commission adopted a new Open Internet rule framework – consisting of three bright line rules, an Internet conduct standard and an Internet traffic exchange rule.[51] To address concerns that it lacked adequate legal authority to do so, it re-classified broadband Internet access service as a Title II telecommunications service – the legacy telecommunications framework designed initially for monopoly telephone companies. While it forebore from applying many Title II obligations to these services, it left significant obligations

Ass'n v. FCC, 825 F.3d 674 (D.C. Cir. 2016), *petitions for rehearing/petitions for rehearing en banc pending* (D.C. Cir., filed July 29, 2016).

[49] *Preserving the Open Internet; Broadband Industry Practices*, Report and Order, 25 FCC Rcd 17905, 17931 (2010), *aff'd in part, vacated and remanded in part sub nom., Verizon v. FCC,* 740 F.3d 623 (D.C. Cir. 2014, *reissued* Jan. 15, 2014).

[50] *See id*., *Verizon v. FCC*, 740 F.3d at 659.

[51] *Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd at 5607-09 ¶¶ 14-22, 5692-96 ¶¶ 202-06.

in place. This included Section 222, which the Commission subsequently used as a basis to adopt new and onerous privacy requirements.[52]

Collectively, the Open Internet regulatory framework represents a more recent example of the same type of problem created by the older, ILEC-centric regulations described above. It imposes regulations asymmetrically – burdening only Internet service providers and ignoring all the broad variety of actors in the Internet ecosystem (e.g. search engines and content providers). And, it does so without having made any findings that the markets at issues are not competitive. Rather, the rationale underlying the Open Internet rules breaks down to a conclusion that, unless the rules are adopted, ISPs might engage in harmful behavior. In other words, the rules are a solution in search of a problem. There is no evidence that the rules are needed to address ISP behavior.

IV. CONCLUSION

CenturyLink seeks regulatory relief from the specific Commission rules as described and demonstrated in the above Comments.

Respectfully submitted,

CENTURYLINK, INC.

By: /s/ Timothy M. Boucher

Suite 250
1099 New York Avenue, N.W.
Washington, D.C. 20001
(303) 992-5751
Timothy.boucher@centurylink.com

Its Attorney

December 5, 2016

[52] *Protecting the Privacy of Customers of Broadband and Other Telecommunications Services*, WC Docket No. 16-106, Report and Order, FCC 16-148 (rel. Nov. 2, 2016).